controlling enemy property is a well-recognised incident of modern warfare. If, therefore, the Japanese authorities dealt with what was to them enemy property in a manner somewhat similar to that in which it might have been dealt with under English law it must be assumed that such actions were legitimate. Although no evidence was before me on the point, it was stated from the Bar that although the second plaintiff was absent her legally constituted attorney was present in Kuala Lumpur at all material times. In my opinion, however, this does not affect the matter. If the purpose of dealing with enemy property is to prevent the payment of money to enemies, this object may well be defeated if an enemy's agent is allowed to collect rents from tenants because that agent may find means of passing such rents to his principal. If the Custodian preferred to ignore second plaintiffs' attorney he was, in my view, entitled to do so.

The first plaintiffs have therefore not satisfied me that the tenancy created by the Japanese Custodian of Enemy Property in favour of the defendants was in any way illegal at the time it was created. What then was the position upon re-occupation of the territory by the Allied Forces? It has been held [*Alagappa Chettiar v. Kader and others*[1]] that a monthly tenancy is one of indefinite duration which exists until terminated by act of party or operation of law. With that decision I respectfully agree, and it appears to me to be in conformity with English Authorities (see *Bowen v. Anderson*[2] *and Mellows v. Low*[3]). In my opinion, the tenancy of the defendants was not terminated by operation of law because the letting of the premises to them was a legitimate act which the re-occupying power was bound to recognise. When, therefore, the owner came back she found a monthly tenancy actually existing in respect of the premises. She has not taken any steps to put an end to that tenancy and therefore, in my opinion, the tenancy still subsists.

It is to be observed that in the agreement made between the first and second plaintiffs one of the terms was as follows:—

> "You are to make your arrangements at your own cost and expense to eject the present occupier and obtain possession of the said premises".

The second plaintiff, having imposed this term upon the first plaintiffs, would no doubt have been bound to allow the use of her name in taking all necessary steps to eject the occupier. The first step in this process would have been a notice to quit given in the name of the proprietor to the occupier. This step has never been taken, and I have strong doubts as to whether the first plaintiffs can be said to be tenants of the second plaintiff at all as alleged in paragraph 4 of the plaint.

First plaintiffs placed some reliance upon the unreported case of the *Chartered Bank v. Bah Keng Ming*[4]. No written judgment was delivered in that case, and it is therefore impossible to know upon what precise grounds it was decided. It is sufficient to observe, however, that in that case a notice to quit was in fact served upon the defendants so that any tenancy which may have subsisted in that case was in fact determined. It is, therefore, of no assistance in deciding the case now before me.

In the view I take of the position of the defendants, it is not necessary for me to decide the various points raised by the defendants under the Rent and Charged Land (Restriction) Enactment and the Courts (Restriction of Civil Jurisdiction) Ordinance. There must be judgment for the defendants with costs on the higher scale.

AW YOCK BENG v. PUBLIC PROSECUTOR.

[Criminal Revision (Brodie, Ag. J.) April 1, 1947]

Customs and Excise Enactment, Trengganu. Sections 69 and 75—The Prohibition of Imports Order 1946 made under the Customs Proclamation 1945—Confiscation of rice imported contrary to Enactment—Transfer of Powers and Interpretation Ordinance, Section 15 (2).

In this case the appellant and the captain of the vessel in which rice belonging to the appellant was carried, were both charged under Section 69 (c) of the Customs and Excise Enactment, Trengganu, but were acquitted by the learned District Judge on the ground that no intent to evade the prohibition had been proved. The learned District Judge however found that the rice was imported, that there was no licence or permit to import and that the vessel carrying the rice anchored off Pulau Kapas (an island forming part of the State of Trengganu) and he therefore dealt with the rice the subject of the charge in the following way: "No order made as to the rice which is a prohibited article imported without licence."

Held, that the effect of the learned District Judge's findings was that he deemed an offence under Section 69 (b) of the Customs and Excise Enactment, which makes it an offence to be concerned in importing any goods contrary to the provisions of the Enactment, to have been committed and that being so, he had no discretion under S. 75 (1) of the Enactment but to order confiscation of the rice.

CRIMINAL REVISION.

Brodie Ag. J. :—This case originally came before me as a Criminal Application by Aw Yock Beng for an injunction against the Asst. Controller of Customs and the Assist. Food Controller to restrain them from disposing of certain rice which had been the subject matter of D. C. Cr. Case Nos. 184 and 185, 1946, and for further and other relief against the Public Prosecutor. The proceedings in this form were in my judgment misconceived but at the hearing all parties (the P. P. and the above named officers being represented by the D. P. P.) agreed to treat the proceedings as an application for revision under the Criminal Procedure Code. The rice was dealt with by the District Judge in the following way "No order made as to the rice which is a prohibited article imported without licence". According to Applicant the District Judge should have ordered the rice to be returned. According to the Respondents the District Judge should have ordered the rice to be confiscated.

The material section of the Customs and Excise Enactment Trengganu is in the following terms "S. 75 (1). All goods seized shall be confiscated if the Court of a Magistrate deem that an offence has been committed in respect thereof notwithstanding that no person may have been convicted of such offence".

The facts found by the District Judge were (1) that the rice was imported (2) that there was no licence or permit to import (3) that the vessel carrying the rice anchored off Pulau Kapas voluntarily. It was not found but it is clear and undisputed that the boat was anchored in territorial waters.

The word "import" is defined by S. 15 (2) of the Transfer of Powers and Interpretation Ordinance as meaning "to bring or cause to be brought into the Malay Peninsula by land sea or air". "Malay Peninsula" is defined by S. 2 as meaning Malaya excluding Singapore and "Malaya" in turn as meaning inter alia "the State of Trengganu"—all islands forming part of such States and the territorial waters thereof". On the finding of the learned District Judge that the boat had anchored off Pulau Kapas voluntarily and not through stress of weather or distress it seems clear that he was justified in holding that this rice by being brought into territorial waters had been imported. And if so it was conceded that it had been imported without a licence.

The owner of the rice and the Captain of the vessel were both charged under S. 69 (c) of the Customs and Excise Enactment, Trengganu. They were both acquitted on the ground that no intent to evade the prohibition had been proved. It was argued before me that even if they had been acquitted, the Engineer of the boat, who, if the 2nd accused was to be believed, was acting as Master as well, was guilty of an offence under S. 69 (c). But the learned District Judge did not find nor in my judgment could he have found that he had any such intent to evade the prohibition as is required under that section. In my judgment an intent to evade involves a guilty or fraudulent intention—and if the owner of the rice had no such intention it is difficult to see how someone unconnected with and uninterested in the disposal of the rice could have had it.

On the other hand the Engineer or whoever navigated the vessel was clearly guilty of being concerned in an offence under S. 69 (b) of the Enactment. This provides that it is an offence to be concerned "in importing . . . . . any goods contrary to the provisions of the Enactment". The law is absolute and no further "intent to evade" is necessary. Both Applicant and Respondent agreed that this Section 69 (b) did not apply as the Prohibition of Imports Order 1946 which rendered the rice prohibited goods was not made under the provisions of the Trengganu Enactment. The relevant orders etc. were not cited to me and I adjourned the case to consider them.

The Prohibition of Imports Order 1946 was made under S. 2 (1) of the Customs Proclamation. This Proclamation by S. 2 (2) provides that all orders made under S. 2 (1) "shall be deemed to have been made in respect of each of the areas mentioned in the Schedule under the provisions of the corresponding Enactment in the Second Column of the Schedule". For Trengganu the corresponding Enactment is the Customs and Excise Enactment. It follows that the Prohibition of Imports Order must be treated as if it had been made under S. 8 of the Enactment and that any person importing in contravention of the Order is in the words of S. 69 (b) "importing . . . . . contrary to the provisions of the Enactment or to any rules made thereunder".

Accordingly I hold that the effect of the learned District Judge's findings is that he deemed an offence under S. 69 (b) to have been committed. That being so he was wrong in not ordering the rice to be confiscated and the record must be amended accordingly and the rice be confiscated. S. 75 (1) gives the Judge no discretion in the matter and if he falls into error by failing to order confiscation a revising Court has no option but to make the order that should have been made.

I should perhaps add that it was contended by the Respondent that goods could be confiscated under S. 75 (1) by executive authority without any order by the Court and that it lay with such authority to determine if necessary what was deemed by the Court. The learned D. P. P. could not specify what person or persons had been entrusted with such almost clairvoyant powers nor can I find any provision in the Enactment giving such powers to any person. The power to confiscate is clearly a judicial power to be exercised by the Court alone and where it is desired that any goods seized should be confiscated it is necessary to obtain an order from the Court to that effect. It is likely that the learned District Judge shared the view that the power to confiscate rested with the Executive and that for that reason, whilst refusing to order the rice to be returned, he contented himself with finding the facts as to the illegal import of the rice.

The Order of the District Judge will accordingly be amended to read "Rice to be confiscated under S. 75 (1) the Court deeming that an offence under S. 69 (b) has been committed in respect thereof".

Order Accordingly.

MOHAMED IBRAHIM BIN LATIFF v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Evans, J.) May 31, 1947]

Penal Code, Sections 464 and 471—Charge of fraudulently using a forged document, which the accused had reason to believed is forged—Prosecution must prove that document was forged and that forgery had been committed.

In this case the appellant appealed against a conviction under Section 471 of the Penal Code for using a forged document, which he had reason to believe to be forged, with intent to commit a fraud. The appellant was the manager of a shop which dealt in rationed goods including rice. Certain ration card holders were registered with the appellant. Subsequently a list was prepared of all the ration card holders and it later transpired that some 63 names were entered in the list which should not have been there. The appellant was convicted in respect of one name only, that is, Suyub bin Mangon. This man denied signing his name on the list.

Held, (1) that to establish the charge under Section 471 of fraudulently using a forged document it is necessary to prove that the document was forged and that forgery had been committed;

(2) that as it did not appear that it was part of the appellant's business or any duty of his to compile the list of ration holders and as the list when completed was of no value and could not be used for any purpose until it had been certified by the Food Control clerk, there was no proof that there had been an offence of forgery as against the appellant;

(3) that on the evidence there was no proof that there was any fraud on the part of the appellant.

Cases referred to:—

(1) *Ram Ghulam Singh v. Emperor* A.I.R. 1929 All. 396.

(2) *Queen Empress v. Kunju Nayar* (1889) 12 I.L.R. Madras 114.

(3) *Badan Singh v. The Crown* (1922) 3 I.L.R. Lahore 373.

(4) *Reg. v. Ritson* 1 C.C.R. 200.

CRIMINAL APPEAL FROM DISTRICT JUDGE

S. K. Das for appellant.

Ismail Khan for respondent.

Evans, J. :—The appellant in this case was the Manager of a shop in Sungei Manik. The shop dealt in rationed goods, including rice, and for that purpose certain ration card holders were registered with the appellant. A year ago, the local Food Officer is said to have ascertained that the number of ration cards was 3 times the number of the local inhabitants. If this fact be true, it is of course strong evidence of widespread fraud.

The persons most obviously likely to benefit by the fraud are the consumers. In the course of the argument, it was suggested that where a dealer, with the holder's knowledge, inserted fictitious names of non-existent persons on a card this was done entirely for his benefit. It does not seem to me likely that a person, a card holder, would become a party to a fraud, the only purpose of which is to enable somebody else to obtain quantities of rice he is not entitled to, and then to charge the holder and other consumers exorbitant prices for such rice on the black market. It seems to me that in such circumstances, the natural presumption is that the card holder commits a fraud or is a party thereto for his own benefit.

In consequence of the Food Officer's discovery, a check was made of the consumers registered with the appellant. For this purpose a man called Abdul Rahman was sent down by the Food Office, and conducted a check lasting several days. This man was an essential witness for the prosecution. It was suggested, in the course of the argument, that he was an accomplice, and that if the appellant were not the